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The Honorable Frederick P. Corbit
Chapter: 11

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In Re:

GIGA WATT, INC.,

Debtor.

No. 18-03197-11

**MOTION FOR FURTHER
DIRECTION AND FOR
PROTECTIVE ORDER
REGARDING EX PARTE ORDER
FOR RULE 2004 EXAMINATION**

I. RELIEF REQUESTED

Perkins Coie LLP (“Perkins”), a non-party witness, asks that the Court enter an order providing further direction to Perkins regarding production to Mark Waldron, in his capacity as the Chapter 11 Trustee (the “Trustee”) of non-privileged documents which are responsive to a Rule 2004 Order entered on July 6, 2020. Because many of the documents contain financial information relating to third parties, Perkins also asks that the Court consider entering a Protective Order placing reasonable limitations on the use and dissemination of such documents.

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1 **II. FACTUAL BACKGROUND**

2 Perkins Coie represented certain non-Debtor former clients, whom the Trustee
3 believes have information relevant to the bankruptcy. Specifically, the Trustee has
4 requested information from Perkins Coie regarding an account it maintained and
5 regarding any agreement that the Debtor entered into with two non-Debtor entities.
6 The Court entered this Rule 2004 Order on July 6, 2020.
7

8 **III. DISCUSSION AND LEGAL AUTHORITY**

9 With regard to the Trustee's desire to obtain documents from Perkins relating to
10 its representation of non-Debtor clients, Rule of Professional Conduct 1.6 requires that
11 Perkins safeguard and keep confidential all such information:

12 (a) A lawyer shall not reveal information relating to the
13 representation of a client unless the client gives informed consent,
14 the disclosure is impliedly authorized in order to carry out the
15 representation or the disclosure is permitted by paragraph (b).

16 RPC 1.6(a). The "information" covered by RPC 1.6(a) is broader than privileged
17 information communicated in confidence by a client:

18 The confidentiality rule, for example, applies not only to matters
19 communicated in confidence by the client but also to all information
20 relating to the representation, whatever its source. A lawyer may
21 not disclose such information except as authorized or required by
22 the Rules of Professional Conduct.

23 RPC 1.6 cmt. 3. Accordingly, Perkins is prohibited from complying with the Rule
24 2004 Order absent client consent, or absent satisfaction of one of the exceptions
25 specified in RPC 1.6(b). Perkins Coie has attempted to contact its former clients at
26 their last known email and physical mailing addresses, but to date has been unable to

1 make contact. Perkins Coie therefore does not have client consent to produce any
2 responsive documents pursuant to RPC 1.6(a).
3

4 Regarding the RPC 1.6(b) exceptions, subpart 6 allows a lawyer to reveal client
5 information “to comply with a court order.” In this matter, although this Court has
6 issued a Rule 2004 order, it has issued the Order ex parte and Perkins understands
7 from its bankruptcy partners that a Rule 2004 Order is, in bankruptcy cases, the
8 functional equivalent of a subpoena. Accordingly, Perkins is unsure whether the
9 existing Rule 2004 Order is sufficient to satisfy the requirements of RPC 1.6(b)(6).
10

11 Perkins therefore requests that the Court provide further guidance through an
12 Order clarifying whether Perkins is directed to produce responsive, non-privileged
13 documents to the Trustee notwithstanding the duties imposed by RPC 1.6(a). Under
14 RPC 1.6(a), Perkins cannot agree to the entry of such an order but Perkins does
15 understand that the Trustee has concerns which the Trustee wants to investigate and
16 that the Court may wish to facilitate such investigations. Perkins does have
17 documents which are responsive to the Rule 2004 Order, which it is able to produce
18 but only upon entry of an additional order making clear that the Court intends for
19 Perkins to produce non-privileged documents notwithstanding the duties imposed by
20 RPC 1.6(a).
21

22 In this regard, most of the documents responsive to the Rule 2004 Order contain
23 financial information related to third parties who sent money to affiliates of the
24 Debtor. Such information includes, for example, bank account numbers, routing
25 information, clues as to the financial resources of such persons and perhaps other
26

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1 sensitive information as well. If such documents are produced for use in this
2 bankruptcy, Perkins believes that a Protective Order should be issued placing
3 reasonable limitations on the use and dissemination of such information. Perkins has
4 filed with this motion a form of proposed Order which it requests that the Court
5 review and sign if appropriate.
6

7 **IV. CONSULTATION WITH COUNSEL FOR TRUSTEE**

8 Perkins has provided a draft of this motion and its proposed Order to counsel
9 for the Trustee prior to filing and has conferred with the Trustee's counsel regarding
10 Perkins' concern that it cannot ethically produce non-privileged documents absent a
11 further order from the Court. Counsel for the Trustee expressed a desire that the Court
12 give expedited consideration to this motion on the ground that the information is
13 important to the Trustee's investigation of the Debtor's affairs. Perkins does not
14 object to expedited consideration. Perkins will send a copy of this motion to its non-
15 Debtor former clients at their last known addresses.
16

17 DATED this 21st day of July, 2020.
18

19 BYRNES KELLER CROMWELL LLP

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